



Northern Ireland
Assembly

**COMMITTEE FOR THE
ENVIRONMENT**

**OFFICIAL REPORT
(Hansard)**

Waste Bill: Departmental Briefing

15 October 2009

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Ms Dolores Kelly (Chairperson)
Mr Cathal Boylan (Deputy Chairperson)
Mr Roy Beggs
Mr John Dallat
Mr David Ford
Mr Danny Kinahan
Mr Ian McCrea
Mr Adrian McQuillan
Mr Alastair Ross
Mr Peter Weir

Witnesses:

Mr Karl Beattie) Department of the Environment
Ms Jennifer McCay)
Mr Denis McMahan)
Mr Donald Starritt)

The Chairperson (Mrs D Kelly):

We move to the Department's briefing on the proposed waste Bill. Members will note that a synopsis of the responses received is included in the Committee papers. At its meeting on 26 March 2009, the Committee agreed that it was content for the Department to initiate policy consultation proposals for inclusion in a new waste Bill, and asked to receive a synopsis of the

responses received during the consultation process. The Bill is currently scheduled for introduction to the Assembly in February 2010.

I invite the departmental officials to come forward. With us are Donald Starritt, from the environmental policy division; Denis McMahon, from the environmental policy division; Karl Beattie, a deputy principal in the environmental policy division; and Jennifer McCay, a deputy principal in the environmental policy division. You are all very welcome. If you could brief the Committee within five to 10 minutes, we would be most obliged, and then we can move to questions.

Mr Donald Starritt (Department of the Environment):

Thank you for the opportunity to speak to the Committee. I do not need to do the introductions again, so I will start by briefly summarising the purpose of the consultation. I will then talk a wee bit about the outcome of the consultation process, summarising the responses that we have received. Finally, I will say something about the way forward.

The consultation process started on 6 April, and closed on 3 July. The proposals fell into three main areas. First, there were a number of changes to existing primary legislation on waste management and contaminated land, as provided for under the Waste and Contaminated Land (Northern Ireland) Order 1997. It is that 12-year-old legislation that we are bringing up to date. Secondly, there were a range of proposed provisions that would clarify local government powers to enter into waste management contracts. Finally, enabling legislation was proposed for a single waste authority.

Members have been given a fairly detailed synopsis of the responses that we received. I apologise if it is too detailed — 42 questions were asked, and we organised the summary around the responses. At this stage, I do not intend to go through the responses in detail, but I am happy to take questions on them.

There are three issues that I will highlight. First, is a proposal that the Minister has decided not to take forward, which is included at question 14 of the table for members' reference. The proposal was to change the legal definition of a waste offence. Very briefly, the background is that, in current legislation, to secure a conviction, it needs to be proven beyond reasonable doubt that the accused was aware of the illegal deposit. The change that was proposed in the

consultation would have removed the requirement to prove knowledge, and shifted the burden of proof to the accused. Some responses were in favour of that proposal, but a significant number expressed concern around the possible impact on innocent landowners. Having looked at that, the Minister has decided not to include that provision in the Bill. That proposal is now withdrawn.

The Chairperson:

We welcome that.

Mr Starritt:

Secondly, I want to mention the waste management contract provisions. In the consultation, 13 questions were asked about that; questions 24 to 38 in the document. Those proposals were specific to waste management, and were to clarify local government powers to enter into waste management contracts. The idea behind that was to build on the more generalised contract provisions that are included in the Local Government (Miscellaneous Provisions) Bill. The responses were almost unanimously supportive of the proposals. However, the main element coming out of the consultation was a request that those powers be transferred to the Local Government (Miscellaneous Provisions) Bill, so that all contract provisions are contained together. The Department was content with that, and that has been taken forward and considered by the Committee. Therefore, I do not propose to dwell on that.

The Chairperson:

That is OK.

Mr Starritt:

On the outcome of the consultation process, I want to mention the single waste disposal authority. The consultation sought views on the concept of establishing such an authority, and the timing of that. It is fair to say that we received mixed views, which we have tried to summarise in the synopsis at question 39.

The Minister is committed to bringing forward enabling legislation. However, final decisions on the policy direction have not been taken just yet. One reason for that is because the consultants who are working on local government reform have been looking at the possibility of shared service delivery across councils. Waste has been part of that analysis. Therefore, the Minister has decided to wait and consider that report in detail before taking a final decision.

As for the planned way forward, the Minister intends to write to the Executive to outline his proposals for legislation and to seek approval to introduce the Bill. Obviously, as part of that process, we will build in the Committee's comments. The hope is that a Bill could be introduced to the Assembly in January or February 2010.

The Chairperson:

A number of respondents called for a technically competent, fully trained and properly resourced appeals body. The Council for Nature Conservation and the Countryside called for a specialist environmental court. What consideration have you given to those responses?

Mr Starritt:

I am not aware of that.

The Chairperson:

It is listed in the document. The synopsis states that:

“Several respondents made reference to the need for a technically competent, fully trained and properly resourced appeals body.”

Mr Karl Beattie (Department of the Environment):

I apologise. That has been suggested. The main problem with setting up a specialist body, as opposed to using an existing body, such as the Planning Appeals Commission, is one of resources. Although issues have certainly been raised with regard to technical expertise, setting up an entirely new body has resource implications. We have not ruled that out in the future. However, at present, we are not actively considering it.

The Chairperson:

Are you, therefore, saying that the Planning Appeals Commission will be the appeals body?

Mr Beattie:

Yes. It will be for the part 3 regime.

Mr Ford:

The first point that you highlighted is the, in effect, backtracking on the issue of whether an

offence is carried out knowingly. Buried in the report is reference to the Water (Northern Ireland) Order 1999 under which the same provisions that were originally proposed apply. If that is removed, will that not weaken the legislation greatly? In effect, an offence will become vastly more difficult to prove. That runs the risk of further illegal dumping of a variety of materials without any suitable redress.

Mr Starritt:

That was certainly part of the consideration to put in a proposal in the first place. Having considered the comments, the Minister believed that the other provisions that are in place to deal with illegal waste are sufficient and has decided not to introduce it at this stage. The Minister took that decision after consideration of all of the outcomes of the process.

Mr Ford:

Presumably, the fact that that was originally proposed suggests that the people who made the proposal believed that it was compliant with human rights obligations. Therefore, it is a political decision on whether it was appropriate, rather than on whether it satisfies human-rights obligations, which is the issue that is mentioned.

Mr Starritt:

The Minister took that political decision not to introduce it.

The Chairperson:

Surely, it was not a farming decision. I am sure that many farmers will be pleased. Are there any other questions or comments? The issue will come before the Committee for consideration; today's session is really just to brief members on responses to the consultation.

Mr Beggs:

On the point that Mr Ford raised, does the Department have a record of how the water legislation has played out? Has that been a particular problem, or has it assisted in protecting the environment?

Mr Starritt:

I know that changes were made to the water legislation; we did a little bit of research on that, and it was initially a very short provision. We understand from speaking to our colleagues that it is

not causing particular problems for water management. That provision is not really used to a great extent.

Mr Beggs:

Have there been complaints about provision?

Mr Starritt:

Not that we are aware of.

Mr Beggs:

If there are no complaints in that regard, why are you not following the same format?

Mr Starritt:

It was because of the responses that we received, probably mainly in relation to farmers. I do not have the specific comments to hand. Farmers in Northern Ireland often own land that is widely dispersed, and the feeling was that it is quite possible that illegal activity could be taking place without the farmer's knowledge. On balance, and having considered those comments, the Minister decided not to proceed.

The Chairperson:

There are concerns in local government in relation to the Review of Public Administration. In particular, in some people's view, the single waste disposal authority flies in the face of decentralisation and giving power to local authorities. There were a number of views stating a preference for permissive powers and a preference for more than one authority. Can you say anything in relation to that?

Mr Denis McMahon (Department of the Environment):

At the moment, there are a number of issues that need to be finally resolved. As Donald said, there is some ongoing work to consider the models. It is fair to say that two different views were expressed. One view was that the waste infrastructure had to be put in place to avoid the risk of major infraction, and that, therefore, there was a need for permissive powers and a fairly centralised organisation, which would be accountable to local government. The other view was that there are three waste management groups that work very well already, and which take into account local needs and concerns, so we should be careful before disrupting those to create a

more centralised structure.

The key point is that, in moving forward, the proposals that are fleshed out will have to ensure that we have an accountable organisation. If it is a single waste authority, it will be a mandatory joint committee of the councils, and would be accountable to the councils. That is the sort of model that we envisage at the moment.

Mr Weir:

In relation to the single waste authority, I appreciate that one of the arguments concerned the idea of decentralisation; however, I think it is debatable whether that holds weight. It would be a better argument if waste was presently dealt with on the basis of each of the individual 26 councils doing their own thing, but the argument is about whether there are three regional bodies or just one.

There are a lot of concerns in relation to the single waste authority — which I do not necessarily share, but I understand where they are coming from — and there may be some degree of smokescreen in that there are differing attitudes to the types of waste disposal. I know that you spoke about providing a degree of assurance and accountability in relation to models. Has any consideration been given to one potential solution, which is a single waste authority, thus ensuring the synergy of having all the administration in one block, while allowing some degree of autonomy at local level to take account of the differing attitudes towards the different types of waste disposal?

I suspect that the issue whom those involved are most concerned about is the attitude, in certain areas, towards incineration. I doubt that there is the same ideological opposition to the administration being carried out by one body. Is consideration being given to a halfway-house style of single body, in which a degree of autonomy is retained around the methodology?

Mr McMahon:

The simple answer is yes. There is an understanding that a single body cannot and will not be a mechanism for forcing through a particular technology in a particular area. Simply, it will not work if it does not have that level of local accountability built into it.

Mr Beggs:

Discussions are occurring in local authorities around waste, and I wish to declare an interest as a member of Carrickfergus Borough Council and as a small landowner.

You said that the waste legislation will be brought forward in January or February 2010. I thought that that was originally going to happen in January. As I understand it, we are on a very tight schedule, and the draft legislation has to be in place for the bidding process that waste management groups have to move on to meet European directives. You seem to be very flexible. Are you not on a tight schedule? It is important that there is plenty of time to deal with the legislation. We do not want to have to rush it through; we want to have the appropriate consultations when the precise wording has been developed. However, you appeared to indicate that you are on a flexible timetable. Can you tell me why you are now talking about introducing the draft legislation in February?

Mr Starritt:

We are still hopeful of introducing the Bill in January. I mentioned February because we cannot entirely predict the difficulties that may come up in the drafting of the legislation. That is why I said "January or February". At the moment, I am still very hopeful that it will be ready for January.

Mr Beggs:

Mention was made of a possible single authority with subdivided waste management plans that take into account certain sensitivities. If such a plan is developed, will you ensure that the local ratepayers in an area pay for what their public representatives wish for? As I understand it, there could be huge implications when it comes to processing waste. People have to be aware of the cost implications of decisions that they make, and that that cost it is not simply shared among everyone. There must be accountability and responsibility for decisions.

Mr McMahon:

Building on the earlier questions, that is absolutely right. That needs to be included. There must be transparency because, as you say, there are massive cost implications around building the infrastructure, and, in the event of delays, around the impact that not building the infrastructure could have.

Mr Ford:

You referred to the possible inclusion of waste management issues within the Local Government (Miscellaneous Provisions) Bill. As you are aware, we have just completed our clause-by-clause scrutiny of that Bill. Therefore, given the urgency that has been expressed about that Bill, we expect it to come to the House for its Consideration Stage in the relatively near future. Is it still a possibility that waste management issues could be included in the Local Government (Miscellaneous Provisions) Bill?

Mr McMahon:

My understanding is that that is a possibility. The intention is to have the legislative stages of the Local Government (Miscellaneous Provisions) Bill completed before Christmas, if possible. However, as with the waste Bill, that depends on specific drafting issues. If we can include those additional clauses in the Local Government (Miscellaneous Provisions) Bill, that will assist the procurement process, because we will be getting those provisions in much earlier.

Mr Ford:

I can appreciate the logic of that. However, does that mean that the Department will be coming back to the Committee with, if nothing else, an informal indication of the clauses that it intends to produce if it is going to seek to amend the Local Government (Miscellaneous Provisions) Bill? Will the clauses simply appear on the Floor of the Assembly?

Mr McMahon:

I would need to come back to you on that.

The Chairperson:

We would appreciate it if you could come back to us on that. As there are no further questions or comments, I thank you for your presentation.

You said at the outset that the Department will be seeking the Committee's views on the waste Bill. Will that be before or after the Bill goes to the Executive?

Mr Starritt:

I meant today, as part of the process. Any views expressed by the Committee will be reflected in our paper to the Executive, and we are hoping to complete that paper fairly soon.

The Chairperson:

Thank you very much. The Committee Clerk has noted the Committee members who are also members of local authorities.